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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 000309

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SUBJECT: KABUL APPEALS COURT AGAIN DELAYS DECISION IN DARI
KORAN CASE

REF: 08KABUL2833

Classified By: Political Counselor Alan Yu for reasons 1.4 (B) and (D)

Summary

¶1. (C) Most observers expected the Kabul Appeals Court to rule February 8 on the appeal of two individuals sentenced to 20-year prison sentences for publishing a Dari translation of the Koran without accompanying Arabic verses. The session ended without decision, and the presiding judge scheduled another hearing for next week. The prosecutor in the case has been pushing the judge to up the sentence to the death penalty while the defense lawyers are arguing for acquittal. Most expect the ultimate decision will be an affirmation of the 20-year sentences, but competing outside pressures appear to be hamstringing the court on making a decision.

The February 8 Court Proceeding

¶2. (U) On February 8 the Kabul Appeals Court again postponed ruling on the appeal of Ghows Zalmai and Mullah Qari Mushtaq, requested two additional witnesses, and scheduled the next hearing for February 15. In September 2008 a Kabul primary court sentenced Zalmai, a former journalist and spokesman for the Attorney General, and Mushtaq, a religious scholar, to 20 years imprisonment for publishing and distributing a Dari version of the Koran without side-by-side Arabic verses.

¶3. (C) The appeals court has conducted five hearings, questioned the defendants, heard arguments, and made no progress towards adjudication. The court adjourned each hearing promptly at noon, sometimes in mid-sentence. The repeated unnecessary delays show the court intends to prolong the appeal to avoid angering either religious hard-liners, by reducing the sentences, or the international community, by affirming the primary court or ordering the death penalty, as the prosecutor has requested.

¶4. (SBU) During the February 8 proceeding, the judge did not touch on the issue of the accuracy of the translation, but rather, focused on the defendants' failure to include Arabic beside the Dari translation. He accused Zalmai of "modifying" the Koran, arguing Zalmai's actions constituted acting as if he were the prophet Mohammed. Zalmai apologized repeatedly, reiterating he was a Muslim and emphasizing he had not intended to cause offense. Mushtaq claimed he had not reviewed the book prior to its publication and dissemination, an assertion Zalmai disputed.

15. (C) Toward the end of the 90-minute proceeding, an associate judge read statements from two witnesses claiming Mushtaq asked for donations to publish the Dari-language Koran during a Kabul mosque prayer service. The chief judge declared these witnesses would have to testify in person and adjourned the hearing for one week. Later, the National Directorate of Security (NDS) Prosecutions Chief, Noorullah, said NDS would guarantee these two witnesses' presence at the next hearing. He declined to speculate whether the additional testimony would allow the judge to reach a decision. A more thorough understanding of the facts would be required, he said. The Ulema Council had also pressed NDS and the Attorney General's office to resolve the case, Noorullah added.

Political Undercurrent

16. (C) This case, like that of Sayad Perwez Kambakhsh, (reftel), is hardly divorced of political influence. The Afghan Independent Human Rights Commission (AIHRC) religious advisor told poloff Sharia law does not allow punishment in cases where the accused publicly apologizes, as Zalmai repeatedly has. Most expect the ultimate decision will be an affirmation of the 20-year sentences, yet the judge (who sentenced Kambakhsh to 20 years imprisonment) appears intent on delaying this decision as long as possible. Whenever the judge does issue a decision, the case will go to the Supreme Court, the final stage of the appeals process. European diplomatic missions are considering making a public statement criticizing the continued judicial inaction. Embassy

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continues to advocate a private approach endorsed by the AIHRC, raising the issue in bilateral meetings with Afghan officials.

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